

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JASON BREITMEYER,  
TRACEY BREITMEYER,

Case No. 2:09-cv-11560

Plaintiffs,

HONORABLE STEPHEN J. MURPHY, III

v.

CITIMORTGAGE, INC.,

Defendants.

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**ORDER AFFIRMING AND ADOPTING REPORT AND  
RECOMMENDATION (docket entry 10) AND DISMISSING COMPLAINT**

This is an action involving a residential loan. Plaintiffs Jason and Tracey Breitmeyer filed a thirteen-count complaint against defendant, CitiMortgage, Inc., asserting violation of the Home Ownership and Equity Protection Act (HOEPA), 15 U.S.C. §§ 1639(b)(3) & (h) and the Truth In Lending Act (TILA), 15 U.S.C. § 1601 *et seq.*, as well as various state law claims. The action was filed in Oakland County Circuit Court and removed to this Court by notice of removal filed by defendants on April 27, 2009. Before the Court is defendant's motion to dismiss, filed on June 10, 2009, and the Report and Recommendation of Magistrate Judge Mona K. Majzoub, filed on July 28, 2009. The magistrate judge's report and recommendation recommended that Count III and V of the Complaint be dismissed with prejudice and that the Court decline to exercise supplemental jurisdiction over the remaining state law claims and either remand to state court or dismiss without prejudice. The Magistrate Judge also notified the parties that any objections must be filed within ten days of service. No party has filed objections to the report and recommendations and the time for filing objections has lapsed.

The Court's standard of review for a magistrate judge's report and recommendation depends upon whether a party files objections. If a party does not object to the report and recommendation, the Court does not need to conduct a review by any standard. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Because neither party filed timely objections to Magistrate Judge Majzoub's report and recommendation, see 28 U.S.C. § 636(B)(1)(c); Fed. R. Civ. P. 6(e), this Court need not and will not conduct a review.

"Where a case containing both federal and state law claims has been removed to this Court pursuant to the court's federal question jurisdiction under 28 U.S.C. §§ 1331 and 1441, and the federal claims have been dismissed, this Court has discretion to either dismiss the remaining state law claims or to remand them." *Jeung v. McKrow*, 264 F. Supp. 2d 557, 572 (E.D. Mich. 2003) (citing *Long v. Bando Mfg. of Am., Inc.*, 201 F.3d 754, 761 (6th Cir. 2000)). Because the plaintiffs have not sought remand of their state law claims in the event of dismissal of their federal claims or objected to the portion of the Report and Recommendation in which Magistrate Judge Majzoub recommends dismissal without prejudice as a course the Court may take if it declines to exercise supplemental jurisdiction, the Court will presume that the plaintiffs do not object to dismissal without prejudice.

**ACCORDINGLY, IT IS HEREBY ORDERED** that the Report and Recommendation [docket entry 10] is **ACCEPTED** and **ADOPTED** as the opinion of this Court.

**IT IS FURTHER ORDERED** that defendant's motion to dismiss [docket entry 3] is **GRANTED** as to Count III and Count V of the Complaint and the claims in those counts are **DISMISSED WITH PREJUDICE**.

**IT IS FURTHER ORDERED** that the Court declines to exercise supplemental jurisdiction over the remaining claims in the complaint, and those claims are **DISMISSED WITHOUT PREJUDICE**.

s/Stephen J. Murphy, III  
STEPHEN J. MURPHY, III  
United States District Judge

Dated: October 30, 2009

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on October 30, 2009, by electronic and/or ordinary mail.

Alissa Greer  
Case Manager